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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,384	12/19/2001	Gerald James Keberlein	KCX-472 (17476)	5212

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EXAMINER
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LEV, BRUCE ALLEN

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/025,384

Applicant(s)

KEBERLEIN, GERALD JAMES

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,8,10-17,19-33 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4,5,10,11,17,19-21,33 and 36-38 is/are allowed.
- 6) ☒ Claim(s) 2,8,12-16 and 22-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

BRUCE A. LEV  
PRIMARY EXAMINER

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Withdrawal of Finality*

The finality of the previous office action of October 14, 2004 is hereby withdrawn and new rejections are set forth below.

### ***Claim Rejections - 35 USC § 112***

***Claims 2, 8, 12-16, and 22-32 are rejected*** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claim 2, the phrase "the second inner side wall" lacks antecedent basis and therefore renders the claim as vague and indefinite.

As concerns claims 8, 12-14, 22, 23, and 30, it is unclear as to whether the "***carton***" is being claimed, or the *combination* of the "***carton***" and "***sheet material***". For example, the preamble states a "carton". However, the body of the claims positively recites the sheet material as being part of the invention, i.e., "sheet material is positioned between the first and second side walls" (claim 8). If only the carton is meant to be claimed, "adapted to be" language should be used when comparing it to a structure (i.e., "the carton *is adapted to be* used for retaining sheet material between the first and second side walls").

As concerns claim 16, the limitation of "access notches are provided" is vague and indefinite since it is not clear as to where the notches are located.

Art Unit: 3634

As concerns claim 25, the limitation of "the side walls being maintained in tensioned relation" is vague and indefinite since it is not clear as to how and with what structure this is accomplished.

As concerns claim 28, the limitation of "the flap being secured...by adhesion" is vague and indefinite since it is not clear as to how this is accomplished (i.e., adhesive).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claims 23, 29, and 30 are rejected*** under 35 U.S.C. ***102(b)*** as being anticipated by ***McConnell et al 3,294,229***.

***McConnell et al set forth*** a system for transporting and displaying sheet material in a carton, the system comprising a bottom panel 12; first and second side walls 14 and 16; sheet material 30; a removable outer protective wrap 34; the carton being one-piece and having relaxed and tensioned positions (viewed as when the sheet material is either in or out of the carton).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3634

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 24-28 are rejected** under 35 U.S.C. **103(a)** as being unpatentable over **McConnell et al in view of Meller 2,331,038**.

**McConnell et al set forth** the system for transporting and displaying, except for the carton having first and second tabs and flaps along the edges of the bottom panel and adhesively secured thereto. However, **Meller teaches** the use of first and second tabs 15 and flaps (viewed as portions of member 11) along the edges of a bottom panel and adhesively secured thereto. . Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of McConnell et al by incorporating first and second tabs and flaps along the edges of the bottom panel and adhesively secured thereto, as taught by Meller, in order to more rigidly and securely deploy and attach the side walls to the bottom panel.

**Allowable Subject Matter**

**Claims 1, 4, 5, 10, 11, 17, 19-21, 33, and 36-38 are allowed.**

**Claims 2, 8, 12-16, 22, 31, and 32 would be allowable** if rewritten to overcome the rejection(s) under 35 U.S.C. **112**, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

As concerns independent **claim 1**, structural limitations pertaining to the **inner side wall** being *folded over and secured to the outer side wall*; the **flap** extending from the inner side wall and *secured over the bottom panel*; and the **arch** being located on *the inner side wall* and comprising a **perforation line**, along with the other structural limitations are not taught nor suggested by the prior art of record.

As concerns independent **claim 10**, structural limitations pertaining to the **inner side walls** being *folded over and secured to the outer side walls*; and the **first and second flaps** extending from the inner side walls and *secured over the bottom panel*, along with the other structural limitations are not taught nor suggested by the prior art of record.

As concerns independent **claim 21**, structural limitations pertaining to the **inner side walls** being *folded over and secured to the outer side walls*; the **first and second flaps** extending from the inner side walls and *secured over the bottom panel*; and the **first and second tabs** along the first and second edges of the bottom panel, along with the other structural limitations are not taught nor suggested by the prior art of record.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Application/Control Number: 10/025,384

Page 6

Art Unit: 3634

January 12, 2005

**Bruce A. Lev**

**Primary Examiner**

**Group 3600**

A handwritten signature in black ink, appearing to read 'B. Lev', written over the printed name and title.